

**Written Testimony of
THE KAYENTA TOWNSHIP COMMISSION
Submitted on behalf of the Navajo Nation
to the United States Senate
Committee on Indian Affairs
September 27, 2000**

The members of the Kayenta Township Commission representing the Navajo people of Kayenta would like to thank Chairman Ben Nighthorse Campbell and the Senate Committee on Indian Affairs for this opportunity to provide testimony on S. 2052, the Indian Tribal Development Consolidation Funding Act of 2000.

THE STRUGGLE TO ACHIEVE SELF-GOVERNANCE

On November 5, 1985, at the urging of tribal community leaders from the Kayenta Chapter, Navajo Nation, (AZ), the Navajo Nation established the Kayenta Township Pilot Project by resolution number CN-86-85. Later, another tribal body withdrew 5.5 square miles of land for this new Township government. The Township Project came about to find a way to address the lack of economic development, high unemployment, lack of infrastructure for businesses, lack of a speedy process to attain a business site lease, and the lack of a system for self-governance.

The adopted goals of the five-year "pilot project" were as follows:

- Establish a town council that had ordinance-making powers.
- Adopt a comprehensive land-use plan.
- Set up the central part of the chapter as a legally defined town entity.
- Address the problem of land destabilization, leasing, lack of mechanisms and resources to plan, zone, develop and oversee land allocations.
- Seek solutions to attract, support, and nurture economic development

In 1985 and currently, local governments across the Navajo reservation were represented by a "chapter" system of government that had no real self-governing authorities. The chapters, for example, could not adopt local ordinances, approve leases for businesses, or sign binding contracts with financial institutions, state and federal entities. Chapters were not set-up to address complicated issues and challenges faced by economic growth centers within the Navajo Nation. +

At the end of five years the Township Project was to report back to the Navajo Nation, but the project took longer than anticipated. For the next several years, the project was sporadically funded while intense planning took place. In 1990, project leaders completed a community-wide survey. This survey determined that the community would support a Township form of government as well as a sales tax. The structure of a Township government was based upon an analysis of several state statutes and actual municipal

+ This changed in 1998 when the Navajo Nation Council adopted the Local Governance Act which authorized Chapters to assume governance at the local level.

operations. The most feasible of these elements were then modified for the conditions of Kayenta.

Finally in 1996, project leaders knew what was needed to accomplish their objectives. They submitted the Five Year Report to the Navajo Nation along with a proposal to adopt a 2.5 percent retail sales tax and create a Township government to oversee the implementation of the sales tax. The Navajo Nation accepted the report on January 19, 1996 and also approved the Kayenta Retail Sales Tax Project by resolution number CJA-3-96. This resolution established the elected, five-member Kayenta Township Commission as a governing board to oversee the implementation of the sales tax.

Almost 11 years after we began our quest, we were given the power to make local decisions and exercise self-governance. The specific authorities granted by the Navajo Nation to the Kayenta Township Commission were as follows:

- Levy and collect a sales tax within the township boundaries.
- Create laws and enforce Kayenta Township Commission's land use plan, zoning, and building ordinances--all subject to Navajo Nation law within the Township boundaries.
- Pass rules and regulations, laws, and ordinances within the Township boundaries that were not already within jurisdiction of the tribe, county, state, or federal government.
- Develop land within the Township for economic ventures

ACCOMPLISHMENTS

(1) Levy and collect a sales tax within the township boundaries.

On June 15, 1997, the Kayenta Township Commission began levying and collecting a 2.5 percent retail sales tax on businesses within the Kayenta Township boundaries. The retail sales tax money collected was committed to developing plans and projects towards addressing seven areas identified by the community:

- (1) Solid waste disposal,
- (2) Airport management and maintenance,
- (3) Recreational facilities,
- (4) Drainage and flood control,
- (5) Fire protection,
- (6) Streets
- (7) Management & enforcement.

The collection of a sales tax has provided for a reliable source of revenue. Over the past three years, the Kayenta Township Commission has collected \$1.2 million from the 2.5 percent retail sales tax. The following are a few examples of where this has gone:

- Tax money has been used to leverage funding for a \$40 million, 230-unit housing project within the Township boundaries. This project began in January and 40 homes are now ready for occupancy.
- Funded, built and operate a \$70,000 Solid Waste Transfer station. The station has

- two operators that haul trash bins from neighboring communities.
- Developed a plan for a 34-acre recreation site with funding from the state of Arizona. The Kayenta Township Commission will also spend \$663,316 to pay for the drainage system at the site. The facility will eventually cost around \$2 million. Additional funding is being sought.
- Considering the use of tax revenues to match funding for a 48-bed juvenile detention facility.

Tax revenues have allowed financial institutions to consider the issuance of a \$1.5 million bond to the Kayenta Township Commission to fund a 1.8 mile stretch of streetlights through Kayenta. Plans have not been finalized but the Kayenta Township Commission has set aside \$1.5 million in this year's budget. Purchased a \$23,000 vehicle for the Kayenta Volunteer Fire Department.

(2) Create laws and enforce Kayenta Township Commission's land use plan, zoning, and building ordinances -- all subject to Navajo Nation law within the Township boundaries.

The Township Commission has adopted procedures and laws to create a business-friendly environment. The Township adopted a business site leasing ordinance in October 1998. The Township has also planned, zoned, and subdivided land within the designated 5.5 square mile boundary. A major hindrance to the luring of new business and capital has always been the tedious process to acquire land. A second issue was that of securing land for a period long enough to protect and realize profit from capital investments.

The Township was zoned into nine different use categories (commercial, residential, industrial, etc). Each zoned parcel was then further subdivided. The subdivisions then had plat surveys with legal descriptions completed, along with completed environmental and archaeological assessments. The goal was to expedite the lengthy existing land allocation process within the Navajo Nation. That process included:

- (1) A review by the Navajo Nation government
- (2) Approval by an approving body within the Navajo Nation Council
- (3) Approval by the Navajo Nation President
- (4) and approval by the Bureau of Indian Affairs.

All these requests were centralized and generally took 28 steps, often years.

The Kayenta Township's streamlined leasing process included: the negotiation and approval of leases in Kayenta, approval of right-of-ways and easements in Kayenta, and an overall administration of a coordinated management of leases in Kayenta. Due to this streamlined process, leases have been approved in record-time, hence luring more businesses to Kayenta. A few examples are listed here:

- Approved a lease for the construction of a new U.S. Post office in July 1999. Eleven months later in June, they were open for business.
- Approved a lease for a new Women's Shelter in December 1999. Construction on

the shelter is now nearly complete.

- Since passing the business site leasing act and procedures in October 1998, the Township Commission has approved 25 leases for businesses and the public sector.
- Since March, a Sonic Drive Inn, a 7-to-11 food store, and a 48-room hotel have had a site designation approved.
- A complete assessment of the water system within the Township was completed

(3) Pass rules and regulations, laws, and ordinances within the Township boundaries that were not already within jurisdiction of the tribe, county, state, or federal government.

By-laws were adopted by the Township Commission to govern the Township. The by-laws require the members to meet once a month, hold an election every four years, hear a status report from the Town Manager, adopt ordinances, and other activities.

The Township Commission has adopted a Kayenta Employment Rights Ordinance that has brought an additional \$45,540 to the Township Commission. This ordinance calls for a three percent construction and business activity tax for the purpose of:

- (a) insuring compliance with adequate building standards
- (b) insuring local employment preference
- (c) creation of additional revenues. This ordinance was passed to bring the monitoring and compliance closer to Kayenta.

(4) Develop land within the Township for economic ventures.

By investing in the infrastructure; building homes, seeking funding for water/sewer line expansions, partnering with the business community and federal/tribal/state entities on utility projects, the Township has created an environment that eases the burden on businesses and others.

LESSONS LEARNED

The Kayenta Township Commission has learned that when given the power to decide matters locally, economic and community development can be achieved.

A sustained and predictable revenue base is necessary for addressing economic development problems on a long-range basis. Outside matching funds from state, federal, county and private sources are more available and have a greater impact if matched by local, sustained funding. Fiscal agents more readily consider loans, bonding and other resources when a funding source is assured for long periods of time. Outside capital interests and business entities operate with confidence when they are assured that the necessary components of the community will be there to enhance, protect and compliment the business enterprise.

Before the 2.5 percent sales tax was approved, funding for planning and operation was a challenge. When funding occurs on an annual basis, dependent upon shifting priorities and the ebb and flow of governmental agencies, a project runs the risk of falling short of its stated goals and objectives. Infrastructure and land use planning is expensive. A number of important activities in the development of the Township were never carried-out because they were beyond the financial resources of the initial Kayenta Project. Navajo County

funded several projects and Peabody Coal Company provided in-kind services in the form of surveying and aerial photography. An assessment of the water needs alone required \$50,000, and sophisticated plat and landscape architectural work-ups were not feasible. In fact, there were times when both the secretary and the director worked half-time, or without pay.

There is a new generation across the Navajo Nation whose values are different than the Navajos of yesterday. In the early days with a wide expanse of land and an emphasis on grazing and traditional living, very little technology and infrastructure was needed. Today, as growth centers accelerate in population and development, a much more sophisticated and complex planning process must be implemented. The existing business site leasing process must be challenged and changed.

Federal entities must allow for flexibility and adaptability at the local level. The BIA, sometimes, was an impediment to processes proposed.

NAVAJO NATION POSITION ON S. 2052

The Navajo Nation has advocated for coordinating federal resources to address economic development needs in Indian country since the mid 1970s. As recently as April 11, 2000, the Navajo Nation urged the House Appropriations Subcommittee on Interior and related agencies to look beyond providing basic services and look toward developing strong Indian economies:

The traditional "Indian funding" within the Department of Interior budget does little to *compliment the bold economic development initiatives elsewhere* within the FY 2001 budget. Understandably, this Subcommittee oversees Interior appropriations, yet the Navajo Nation concerns are comprehensive with respect to other federal Departments' budgets. The Navajo Nation agrees with Congress in that Indian Self-Determination is inextricable from economic development. "The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete and excel in life areas of their choice, and to achieve a measure of self-determination essential to their social and economic well being. 25 U.S. C §450(a)c

--Written Testimony of the Navajo Nation, April 11, 2000.

The Navajo Nation is at a pivotal point in time where it is faced with depleting natural resources; therefore, it must develop strategic partnerships and create innovative forms of financing to sustain us as a sovereign nation.

One of the largest impediments to a viable Navajo Nation economy is the lack of basic infrastructure such as water systems, sewer systems, electricity, telephone and access roads. Now is the time to allocate increased infrastructure funds towards economic development projects that will promote a multiplier effect and generate new revenues for the Navajo Nation.

Many potential Navajo entrepreneurs lack the equity to finance the start-up costs of their new business. In fact, a majority of start-up costs pertains to infrastructure development, which can total thousands and even millions of dollars.

Accordingly, the proposed Act will help provide the magnitude of funding necessary to overcome this problem and help tribes such as the Navajo Nation become more self-sufficient. These new businesses need capital to develop the infrastructure for their operations.

The Navajo Nation Division of Economic Development has provided substantial amounts of technical assistance and monetary contributions towards the economic growth of the Kayenta community. For example, a shopping center was built comprised of numerous tenants including Navajo-owned franchises, i.e., Burger King and McDonald's.

The Division has also contributed towards the infrastructure cost to develop a Navajo-owned franchise, the Hampton Inn Hotel, and a branch office for the Wells Fargo Bank. The area was also designated as an Enterprise Community under the Department of Agriculture and is ready for implementation.

Through these contributions, the Division established the economic base for further growth of the Kayenta community.

Consequently, the Navajo Nation receives a multitude of requests for financial assistance, yet the Navajo Nation has very limited funds. It is hoped this Act will provide increased windows of opportunity for Navajo entrepreneurs and the Navajo Nation as a whole.

SECTION 4. THE LEAD AGENCY.

The Navajo Nation also recommends that the lead agency be required to consult with Indian nations as an on-going process in developing the Demonstration Project - to honor the government-to-government relationship expressed in Presidential Executive Order.

SECTION 5. SELECTION OF PARTICIPATING TRIBES

Section 5(a)(1) Participants.

With 500 federally recognized tribes, the level of economic devastation that Indian nations face, and the advent of more tribes gaining federal recognition, limiting the number of participating tribes to 24 seems unreasonable. The Navajo Nation recommends that the number of tribes to participate in the demonstration project be increased to 50. In light of the history of Indian economies, 50 is a reasonable number.

SECTION 5. SELECTION OF PARTICIPATING TRIBES

Section 5(b)(3) Applicant Pool

The Navajo Nation recommends this language be amended by inserting the phrase "significant and" immediately preceding the word "material" in this section.

SECTION 6. AUTHORITY OF HEADS OF EXECUTIVE AGENCIES.

Section 6(b), Scope of Coverage.

The Navajo Nation is concerned that the Department of Energy, the Department of Transportation, the Department of Justice, and the Office of Management and Budget are not included. Each of these departments have programs and technical expertise currently being utilized to develop infrastructure for Indian nations. Excluding these departments from participation would go against the intent of S. 2052 and the United States trust responsibility to Indian nations.

The Navajo Nation recommends that all executive agencies be included within the scope of this Act. The federal trust responsibility to Indian nations spans the entire government.

SECTION 13. JOINT FINANCING FOR FEDERAL-TRIBAL ASSISTANCE PROJECTS.

The Navajo Nation recommends the following language be inserted. "Nothing in this section shall abrogate the sovereignty of Indian Nations nor extend state regulatory authority over Indian nations."

The Navajo Nation recommends this language be inserted to protect the sovereign status of tribal governments.

Conclusion

In conclusion, the Navajo Nation strongly supports the proposed new legislation with the changes recommended. Any improvement in communication, coordination and pooled funding between federal agencies for tribal economic development initiatives will certainly be a win-win situation for all concerned.